United States Court of Appeals

for the Second Circuit

AMICUS BRIEF

Nos.

76-6049, 6050, 6059

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

XB

CITY OF HARTFORD, ET AL.,

Plaintiffs-Appellees,

P/S

v.

TOWNS OF GLASTONBURY, WEST HARTFORD,
and EAST HARTFORD,

Defendants-Appellants,

and

CARLA A. HILLS, SECRETARY OF HOUSING
AND URBAN DEVELOPMENT, ET AL.,

Defendants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT AMICUS CURIAE

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QUESTION PRESENTED

Whether the district court properly construed the duties of the Secretary of Housing and Urban Development under the Community Development Block Grant program.

STATEMENT OF FACTS

The City of Hartford, Connecticut, eight members of Hartford's Court of Common Council, and two low-income residents of Hartford instituted this action in the United States District Court for the District of Connecticut on August 11, 1975, against the Secretary of Housing and Urban Development, her Department, and two other HUD officials. Plaintiffs alleged that in approving the first-year (FY 1975) applications of seven suburban communities in the Hartford metropolitan area for assistance pursuant to the Community Development Block Grant program created by the Housing and Community Development Act of 1974, 42 U.S.C. 5301 et seq., the Secretary violated the provisions of the Act, as well as requirements imposed by Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) et seq, Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601 et seq., and 42 U.S.C. 1981, 1982, and 1985. Pursuant to the Secretary's motion, the seven suburbs (Glastonbury, West Hartford, East Hartford, Enfield, Farmington, Vernon, and Windsor Locks) were joined as defendants.

Following a hearing on the Secretary's motion for summary judgment, the district court (Blumenfeld, J.) issued a preliminary injunction on September 30, 1975, halting expenditures by the defendant suburbs. On October 29, the court denied motions to reconsider but granted, in part, motions to alter or amend the preliminary injunction. 408 F. Supp. 879.

Further affidavits and a supplemental motion to dismiss were subsequently filed, and on January 28, 1976, the court issued its decision enjoining the defendant suburbs from spending funds granted under the block grant program for FY 1975 pending resubmission of their first-year applications to the Secretary and the Secretary's approval of those applications in a manner consistent with the court's decision. 408 F. Supp. 889.

Five of the seven defendant suburbs[1/] have submitted revised first-year grant applications to HUD. The Department is in the final stages of reviewing those applications.

Glastonbury, West Hartford, and East Hartford have appealed from the district court's decision. No appeal was filed by the Secretary or the other four defendant suburbs.

ARGUMENT

Introduction and Summary

The Secretary has not appealed in this case because the result reached by the district court is not inconsistent with present practices adopted by HUD subsequent to the administrative determinations challenged in this litigation and because the court's opinion can be read in a manner consistent with the Department's interpretation of its duties under the Act. Moreover, the injunction entered below applies only to the seven suburbs.

Nevertheless, some of the district court's statements regarding the Secretary's responsibilities under Title I

1/ East Hartford and Windsor Locks have not filed revised applications.

of the 1974 Act suggest an interpretation which may be inconsistent with the Department's procedures. Accordingly, we set forth our view of the Act, its legislative history, and the evolving regulations of the Secretary which implement it. We then discuss the district court's decision in relation to the statutory and regulatory scheme.

A discussion of the standing issue raised by the appellant suburbs is outside the scope of this brief. We invite the Court's attention, however, to two facts which may be relevant to that issue. On June 3, 1976, the City of Hartford inquired about obtaining funds reallocated from the second-year entitlement grant of Windsor Locks, for which that suburb had not applied. On June 30, 1976, HUD advised the City that, unlike a number of other Connecticut communities, Hartford did not satisfy the urgent needs test under 24 C.F.R. 570.409, as amended, 41 Fed. Reg. 21750 (May 27, 1976). HUD, therefore, advised the City not to apply for the reallocated funds.[2/]

Second, as the Government advised the district court, HUD processed the City's own first-year application under the identical procedures applied to the suburbs' applications. HUD approved a grant of $10,025,000 to the City, as compared to total grants to the seven suburbs of $4,461,000. Supplemental Affidavit of Lawrence L. Thompson, ¶¶ 50-53, and exhibits thereto, filed September 12, 1975; Tr. 497-498.

2/ Copies of both letters are attached as an appendix. Although they are not part of the record on appeal, this Court can take judicial notice of these public records under Rule 201 of the Federal Rules of Evidence.

I. The Provisions of Title I and Their Legislative History.

Title I of the Housing and Community Development Act, 42 U.S.C. 5301 et seq., which was enacted on August 22, 1974, establishes a new system of federal assistance for community development activities administered by HUD. Title I consolidates and supersedes previous categorical programs, such as urban renewal, 42 U.S.C. 1450 et seq., model cities, 42 U.S.C. 3301 et seq., water and sewer facilities, 42 U.S.C. 3101 et seq., and open-space land, 42 U.S.C. 1500 et seq. See 42 U.S.C. 5316. Each of these categorical programs served specified purposes and had its own distinct statutory and administrative restrictions. Applications from local communities for assistance under these categorical programs received extensive review by HUD prior to approval, and compliance with detailed program requirements was carefully monitored by HUD. The new Community Development Block Grant program was designed to create a streamlined program which deals comprehensively with urban problems that previously had been addressed only in a piecemeal fashion. S. Rep. No. 93-693, 93rd Cong., 2nd Sess. 1-2, 48-49 (1974); H.R. Rep. No. 93-1114, 93rd Cong., 2nd Sess. 2-3 (1974).

The 1974 Act is a compromise reflecting differing philosophies of the proper role of the Government in granting funds to local communities. Fishman, Title I of the Housing and Community Development Act of 1974: New Federal and Local Dynamics in Community Development, 7 Urban Lawyer 189, 191 (1975). The legislation originally proposed by the Administration was in the form of revenue sharing whereby funds would be automatically allocated to communities based upon objective needs criteria. H. R. 8853, 92nd Cong., 1st Sess. (1975); S. 1618, 92nd Cong., 1st Sess. (1971). Under this proposal, there was no requirement for a local community to file a formal application or for the Secretary to conduct a formal review process. Other members of Congress introduced different bills, which would also have consolidated many categorical programs but which would have imposed substantial preconditions to awarding grants, together with application and review procedures, with the intent of furthering previously established national housing and community development goals. H.R. 9688, 92nd Cong., 1st Sess. Tit. 6 (1971); S. 3248, 92nd Cong., 2nd Sess. Ch. 3 (1972). The bill passed by the Senate, S. 3066, 93rd Cong., 2nd Sess. (1974), retained a strong federal role in reviewing local development priorities and activities.

The House bill, H.R. 15361, 93rd Cong., 2nd Sess. (1974), struck a compromise between the Administration's revenue-sharing approach and the Senate bill, and this

compromise approach was adopted in the 1974 Act. Thus, the Act retains the Senate bill's statement of findings and objectives, 42 U.S.C. 5301,[3/] and imposes an application requirement, 42 U.S.C. 5304(a) and (b), but limits the review by the Secretary prior to approving entitlement grants, the so-called "front-end review." 42 U.S.C. 5304(c).

3/ Thus, 42 U.S.C. 5301(a) provides:

> The Congress finds and declares that the Nation's cities, towns, and smaller urban communities, face critical social, economic, and environmental problems arising in significant measure from --
>
> (1) The growth of population in metropolitian and other urban areas, and the concentration of persons of lower income in central cities; and
>
> (2) inadequate public and private investment and reinvestment in housing and other physical facilities, and related public and social services, resulting in the growth and persistence of urban slums and blight and the marked deterioration of the quality of the urban environment.

(footnote continued on following pages)

(footnote 3 continued)

The Act's objectives are set forth in 42 U.S.C. 5301(c):

> The primary objective of this chapter is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, the Federal assistance provided in this chapter is for the support of community development activities which are directed toward the following specific objectives --
>
> (1) the elimination of slums and blight and the prevention of blighting influences and the deterioration of property and neighborhood and community facilities of importance to the welfare of the community, principally persons of low and moderate income;
>
> (2) the elimination of conditions which are detrimental to health, safety, and public welfare, through code enforcement, demolition, interim rehabilitation assistance, and related activities;
>
> (3) the conservation and expansion of the Nations's housing stock in order to provide a decent home and a suitable living environment for all persons, but principally those of low and moderate income;
>
> (4) The expansion and improvement of the quantity and quality of community services, principally for persons of low and moderate income, which are essential for sound community development and for the development of viable urban communities;

(continued on page 9)

argument in this Court as the issue of whether the district

The limited federal role during the planning and application stages of the program is highlighted by the fact that the grants in issue in this litigation are designated "entitlement grants." Section 106 of the Act, 42 U.S.C. 5306, provides that, subject to the application requirements, each metropolitan city and urban county shall be entitled to annual grants calculated pursuant to a prescribed formula based upon population, poverty, and housing overcrowding. Thus, basic judgments regarding a local community's needs and priorities are to be made by the community, not the Secretary. So long as the application meets the statutory

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(footnote 3 continued):

> (5) a more rational utilization of land and other natural resources and the better arrangement of residential, commercial, industrial, recreational and other needed activity centers;
> (6) the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods to attract persons of higher income; and
> (7) the restoration and preservation of properties of special value for historic, architectural, or esthetic reasons. * * *

and regulatory requirements, it must be approved. The legislative history of the Act expressly condemns "second-guessing by Washington" of local priorities and needs. S. Rep. No. 93-693, supra at 56; Accord, H.R. Rep. No. 93-1114, supra at 9.[4/]

The block grant program basically is not a program for the construction of housing or payment of housing allowances. See 42 U.S.C. 5305. Indeed, the Secretary's regulation, 24 C.F.R. 570.201(f), prohibits use of block grant funds for construction of new housing, with one narrow exception for housing constructed as a last resort for persons displaced by a federal or federally assisted project.[5/] Use of block grants for payment of housing allowances is prohibited by 24 C.F.R. 570.201(g). In general, most of the eligible activities funded by block grants involve improvements to the community's physical and economic environment such as acquisition of real estate to be used for public purposes and acquisition and construction of public facilities including water and sewer facilities, parks and recreation areas, or streets. See 42 U.S.C. 5305; 24 C.F.R. 570.200.

4/ In contrast to entitlement grants, the Secretary is assigned a larger role in allocating funds for "discretionary grants" authorized by 42 U.S.C. 5307 and 5306(d) and (e). Discretionary grants can be made to individual communities for any of several generally defined purposes. A more detailed front-end review is necessary for the Secretary to choose among the competing applicants for these grants.

5/ Rehabilitation of existing housing, however, can be an eligible activity. 24 C.F.R. 570.200(a)(4).

Title II of the 1974 Act deals with federally assisted housing. The primary source of federal subsidies for local housing activities is the Section 8 program. 42 U.S.C. 1437f. Approximately $1,800,000 in annual Section 8 subsidies is available to all suburban communities in the Hartford metropolitan area, i.e. that portion of the Hartford metropolitan area outside the City itself. First Affidavit of Lawrence L. Thompson, filed August 25, 1975, p. 4. Of this amount, the housing assistance plans of the seven defendant suburbs submitted with their first-year block grant applications require $1,700,000 for 480 units of housing (Id.). Thus, the seven suburbs have planned to utilize all available Section 8 funding (Id.).

To obtain block grant funds under Title I, a community must submit an application to the Secretary in accord with 42 U.S.C. 5304. As part of application, the community must submit a housing assistance plan ("HAP") which (42 U.S.C. 5304(a)(4) (emphasis added)):

> (A) accurately surveys the condition of the housing stock in the community and assesses the housing assistance needs of lower-income persons (including elderly and handicapped persons, large families, and persons displaced or to be displaced) residing in or expected to reside in the community,
>
> (B) specifies a realistic annual goal for the number of dwelling units or persons to be assisted * * *,
>
> (C) indicates the general locations of proposed housing for lower-income persons * * *.

In addition to the HAP, the application must also include a three-year community development plan, a community development program indicating activities to meet the needs and objectives set forth in the plan, and specified certifications that certain statutory requirements have been met. 42 U.S.C. 5304(a).

Reflecting the compromise between the revenue-sharing approach and the extensive pre-approval or front-end review approach discussed above, the Act limits the Secretary's front-end review of applications in three ways. First, 42 U.S.C. 5304(f) provides that applications "shall be deemed approved within 75 days after receipt unless the Secretary informs the applicant of specific reasons for disapproval." Second, the Act relies upon certifications by the applicant, rather than independent determinations by the Secretary, that particular statutory requirements have been fulfilled. 42 U.S.C. 5304(a)(5) and (6); 42 U.S.C. 5304(b)(2) and (h). Third, 42 U.S.C. 5304(c), specifies that the Secretary <u>shall approve</u> the application unless:

> (1) on the basis of significant facts and data, generally available and pertaining to community and housing needs and objectives, the Secretary determines that the applicant's description of such needs and objectives is plainly inconsistent with such facts or data; or
>
> (2) on the basis of the application, the Secretary determines that the activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant * * *; or

> (3) the Secretary determines that the application does not comply with the requirements of this chapter or other applicable law or proposes activities which are ineligible under this chapter.

Section 104(d), 42 U.S.C. 5304(d), provides for post-approval monitoring by the Secretary of the applicant's performance in carrying out its activities under the grant. The Act also provides a means of recouping amounts expended in violation of the program's requirements. 42 U.S.C. 5311.[6/]

II. Evolution of the Secretary's Regulations Implementing the Expected-to-Reside Element.

This litigation focuses on the Secretary's implementation of the requirement that the HAP "accurately * * * [assess] the housing assistance needs of lower-income persons * * * residing in or expected to reside in the community * * *." 42 U.S.C. 5304(a)(4)(A). As described above, the expected-to-reside estimate is but one of a number of items included in the HAP, which in turn is but one of a number of components of an application for block grant entitlement funds.[7/]

6/ Courts have upheld HUD's application of the standards of review outlined above in contexts somewhat dissimilar from the present case. E.g., Ulster County Community Action Comm., Inc. v. Koenig, 402 F. Supp. 986 (S.D.N.Y., 1975); Knoxville Progressive Christian Coalition v. Testerman, 404 F. Supp. 783 (E.D. Tenn., 1975); NAACP v. Hills, 412 F. Supp. 102 (N.D. Cal., 1976); Bois D'Arc Patroits v. City of Dallas, Civ. No. 3-75-0906-D (N.D. Tex., March 17, 1976).

7/ The HAP also serves as the basis for allocating housing assistance payments, including Section 8 subsides, to local communities. 42 U.S.C. 1439.

The only expression of Congressional intent in the committee reports which sheds light on the meaning of the expected-to-reside provision is H.R. Rep. No. 93-1114, supra at p. 7:

> The committee wishes to emphasize that the bill requires communities, in assessing their housing needs, to look beyond the needs of their residents to those who can be expected to reside in the community as well. Clearly, those already employed in the community can be expected to reside there. Normally, estimates of those expected to reside in a particular community would be based on employment data generally available to the community and to HUD. However, in many cases, communities should be able to take into account planned employment facilities as well, and their housing assistance plans should reflect the additional housing needs that will result.

The short period between the enactment of the Act (August 22, 1974) and the time when instructions had to be made available to applicant communities so that they could receive their FY 1975 entitlement grants within that fiscal year did not enable HUD to anticipate all of the problems that applicants might have in developing data for the expected-to-reside estimate. HUD's first-year regulations, which were published on November 13, 1974 (39 Fed. Reg. 40136), added little to the statutory language as illuminated by the legislative history. Thus, 24 C.F.R. 570.303(c)(2) (1975 ed.) provided that the HAP should estimate "the housing assistance needs of lower income persons * * * either already residing in the community, or planning or

expected to reside in the community as a result of planned or existing employment facilities." The instructions accompanying the first-year application forms directed applicants to calculate a net expected-to-reside figure based upon the number of lower-income families with workers commuting into the community minus those lower-income residents commuting out of the community. Ptfs. Exh. 2. With this approach, a zero figure for the expected-to-reside estimate is more than merely a conceptual possibility for a bedroom suburban community. See Supplemental Affidavit of William J. Flood, filed November 7, 1975, pp. 2-3.

The seven defendant suburbs submitted their applications in March and April of 1975. First Affidavit of Lawrence L. Thompson, filed August 25, 1975, p. 2. In all, the HUD Hartford area office, with its review division staff of twenty-five persons, received thirty-three first-year applications (Tr. 481-484). As the applications were received -- and as HUD's seventy-five day period to disapprove the applications was running -- it became apparent that the methodology of many applicants for computing the expected-to-reside figure was unsophisticated and that reliable data for the computation were not readily available. See Supplement Affidavit of Lawrence L. Thompson, filed September 12, 1975, p. 3 Affidavit of William J. Flood, filed September 12, 1975.

In these circumstances, a memorandum of HUD's Assistant Secretary David Meeker was issued on May 23, 1975, as an interim solution to the data problem. Exhibit B to the First Thompson Affidavit, supra. This memorandum provided that HUD's field offices should develop an expected-to-reside figure for each applicant based upon the Journey to Work tables of the 1970 Census. Then, the HUD reviewer, if he concluded that an applicant's potential housing needs had been understated, would require the applicant either to (1) adopt the HUD expected-to-reside figure; (2) adopt a different figure of its own based upon appropriate data and methodology; or (3) "[i]ndicate what steps the applicant intends to take in identify[ing] a more appropriate needs figure by the time of its second year submission." Meeker Memorandum, supra, at p. 2.

The district court held that this third option constituted an invalid waiver of the statutory requirement for an expected-to-reside estimate for the first year (Decision, pp. 21-29). The Government does not appeal that holding,

The Meeker Memorandum directed HUD's field offices to calculate expected-to-reside figures for each applicant based upon the Journey to Work tables in the 1970 Census. In the case of the Hartford metropolitan area and numerous others, the census data were broken down to a municipality-by-municipality basis only for the central city, not the suburbs.

Flood Affidavit, supra, p. 2; See Affidavit of Allan F. Thornton, filed November 7, 1975. Therefore, it was impossible in these cases for HUD to calculate an expected-to-reside figure for the suburbs in accord with the Meeker Memorandum. Based upon this fact, and the absence of other generally available information or data, HUD could not disapprove the expected-to-reside figures submitted by the suburbs as "plainly inconsistent" with generally available significant facts and data. 42 U.S.C. 5304(c)(1).

As a result of the difficulties encountered in the first year of the block grant program, HUD began an investigation of data services and alternative methodologies for computing expected-to-reside figures. Thornton Affidavit, supra. Given the non-availability of significant data developed locally, HUD has contracted with the Bureau of Census for a special tabulation to provide Journey to Work data for every community with a population of 20,000 or more. HUD also developed a new methodology to utilize available data to obtain an accurate expected-to-reside estimate. 24 C.F.R. 570.303(c)(2)(i) and (ii), as amended, 41 Fed. Reg. 11128 (March 16, 1976). Communities are required to use this methodology in computing their expected-to-reside estimate. Moreover, HUD has provided every community eligible for an entitlement grant with data for the methodology. The

community may substitute more recent, locally generated data providing that any inconsistences with HUD's data are explained.

The Department believes that these new procedures will eliminate the uncertainty which surrounded the computation of expected-to-reside estimates during the first year of the program. Every community in a metropolitan area will have a methodology and data which it can use. No such community can delay submission of an estimate of families expected to reside because of the non-availability of data. This development has for HUD's purposes made it unnecessary to appeal from the decision below, for it is the Department's belief that the procedures satisfy the reservations expressed by the district court regarding HUD's first-year processing.[8/]

8/ The district court noted that the regulations proposed on January 15, 1976, permitted a possible delay by communities in submitting expected-to-reside estimates in connection with second-year applications (Decision, p. 28, n. 55). That provision has been eliminated. 41 Fed. Reg. 7503, 7504 (Feburary 19, 1976).

III. The District Court's Description of the Secretary's Review Responsibilites.

Although they are not essential to the district court's decision, portions of its opinion appear to us susceptible to a misreading of the Secretary's standard of review with respect to entitlement grants. Some language might be viewed as imposing a duty upon the Secretary to obtain independent data thereby imposing an obligation inconsistent with the statutory scheme discussed above and unrealistic in practical application.

Pursuant to Section 104(c)(1) of the Act, 42 U.S.C. 5304(c)(1), the Secretary can disapprove an application for an entitlement block grant based upon the applicant's expected-to-reside estimate only if that estimate is "plainly inconsistent" with "significant facts and data" that are "generally available." Although the district court acknowledges this limited standard of review at one point in its opinion (Decision, p. 29, n. 56), elsewhere in the opinion the standard is stated in a different manner. That is, the court indicates that the Secretary must disappprove the application if "the community's true needs are not reflected in the application * * *" (Decision, p. 17).

We believe that the district court intended only that HUD could not remain passive, ignore generally available facts and data, and approve block grant applications which rely upon clearly deficient data. There can be no quarrel with such a holding. By stating the statutory standard as it did, however, the district court may encourage others

to imply that HUD has a duty to ascertain independently what an applicant's "true needs" are. Such an interpretation might be supported by the district court criticism of HUD's conclusion that there were no generally available data to prepare expected-to-reside estimates for the defendant suburbs on the ground that data "lacking only income figures for the commuters, proved to be available from the Connecticut Department of Transportation, on only two days' notice!" (Decision, p. 34). In addition the court implies that HUD must explore the broad range of data sources -- such as local agency records, building permits, and major contract awards -- which HUD instructions indicate might be appropriately reviewed by the local applicants (Decision, pp. 35-36).

The court's emphasis upon the Department of Transportation data is anomalous for two reasons. First, the fact that the data lacked income figures was a major shortcoming -- prior to the development of the new HUD methodology described above -- in using that data to calculate the number of lower-income persons expected to reside in a given suburb. Supplemental Affidavit of William J. Flood, filed November 7, 1975, p. 2. Second, the City of Hartford deliberately refrained from presenting that data in the agency review proceedings on the ground that the data were outdated and not significant (Tr. 131).

Apart from these facts, imposing a duty upon HUD to determine a community's "true needs" by an independent investigation of relevant data conflicts with the statutory

scheme calling for a limited front-end review prior to approval of a block grant application. Moreover, even under the urban renewal program, with its extensive front-end review, the Secretary had no duty to verify by independent inspection materials submitted by applicants. Blankner v. City of Chicago, 504 F. 2d 1037, 1041 (C.A. 7, 1974) (alternative holding), certiorari denied, 421 U.S. 948 (1975). A fortiori no such duty should be imposed under the block grant entitlement program. Such a duty would pose an unrealistic burden in light of the seventy-five day time limitation and the large number of applications received and processed by HUD.

HUD considered the comments filed as part of the A-95 review process[9/] by the City of Hartford and others which were critical of the applications of the seven defendant suburbs. Supplemental Affidavit of Lawrence L. Thompson, filed September 12, 1976, p. 2. HUD found that these comments did not contain significant facts or data and did not refer to data sources which would warrant disapproval of the suburbs' applications.[10/]

9/ This procedure, set forth in OMB Circular A-95, involves review by local area-wide planning organizations and is required by 42 U.S.C. 5304(e)

10/ Under HUD's present regulations anyone asserting that portions of an application are plainly inconsistent with generally available facts and data is required to submit to HUD "a precise description of the identity and location of documents containing the data upon which such person relies." 24 C.F.R. 570.300(c), as amended, 41 Fed. Reg. 7503, 7504 (February 19, 1976).

In the district court, the Government argued that judicial review should be confined to the administrative record and that de novo evidence was improper. Memorandum in Support of Federal Defendants' Motion to Dismiss or in the Alternative for Summary Judgment, filed September 12, 1975, p. 16. The district court, however, conducted a three-day evidentiary hearing and considered numerous other materials which were not part of the administrative record. The Supreme Court has emphasized that in reviewing informal agency decisions, "the focal point for judicial review should be the administrative record already in existence, not some new record made initially in the reviewing court." Camp v. Pitts, 411 U.S. 138, 142 (1973); See Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971); Schicke v. Romney, 474 F. 2d 309 (C.A. 2, 1973). As the First Circuit held in Bradley v. Weinberger, 483 F. 2d 410, 415 (1973), with respect to reviewing informal agency action:

> Courts are to determine whether an agency's action was arbitrary or capricious in light of the information it confronted. It is a re-view, a second look at the same material, not a re-doing.

The district court's procedure of accepting evidence that was not before the Secretary would interject uncertainty into the administration of the program whenever new data become available or new techniques are developed to utilize prior data. Appellants, however, apparently do not pursue this

argument in this Court so the issue of whether the district court properly considered materials outside the administrative record perhaps does not need to be decided.

Finally, the Government agrees with the district court that an important objective of the Act is "the spatial deconcentration of housing opportunities for persons of lower income * * *." 42 U.S.C. 5301(c)(6). It should be noted, however, that this objective is but one of many contained in 42 U.S.C. 5301.[11] The primary method of accomplishing this objective is through the element of the HAP, described in 42 U.S.C. 5304, which requires the applicant to identify the location of lower-income housing planned for the community. In reviewing the HAP, HUD can require that a community not limit housing opportunities for lower-income families to areas presently having a concentration of such families.

The estimate of those families expected to reside in an applicant community is another means of accomplishing the spatial deconcentration objective.[12] It would be improper

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11/ See supra, p. 7 n.3.

12/ Contrary to the statement in the brief of appellants Glastonbury and West Hartford (p. 35), communities will not be permitted to limit their community development and housing efforts exclusively for the benefit of their own residents.

however, to construe this provision as the key enforcement tool which Congress provided HUD to accomplish the multiple goals of the Act. As a prerequisite for receiving block grant funds, communities assume many responsibilities, including the numerous other aspects of the HAP unrelated to the expected-to-reside estimate.

CONCLUSION

The Housing and Community Development Act of 1974 limits front-end review by the Secretary of entitlement block grant applications submitted by local communities. The district court's holding is consistent with this limited review function, but some portions of its opinion are susceptible to a construction that would be inconsistent with the Act.

Respectfully submitted,

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JULY 1976.

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of July, 1976, I served the foregoing brief upon counsel for all other parties by causing copies thereof to be mailed, postage prepaid, to them at the addresses listed below. I further certify that on this 6th day of August, 1976, I served corrected printed copies of the foregoing brief upon counsel for all other parties by causing copies thereof to be mailed, postage prepaid, to:

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COUNCIL – MANAGER GOVERNMENT

June 3, 1976

JUN 10 1 02 PM '76
D.H.U.D.
HARTFORD AREA

Mr. Lawrence Thompson, Area Director
Department of Housing and Urban Development
Hartford Area Office
999 Asylum Avenue
Hartford, Connecticut 06105

Dear Mr. Thompson:

The City of Hartford is interested in exploring the possibility of applying for the Community Development Block Grant (CDBG) funds turned back by Windsor Locks to the Department of Housing and Urban Development. It is my understanding that Section 570.107(a) of the CDBG regulations would govern the reallocation of these funds, that is, that the HUD Secretary would reallocate these funds, first, in this or another metropolitan area within Connecticut.

It would be our intention to submit to you a joint application for a regional vocational education program, designed to provide residents of the Greater Hartford area with employment skills necessary to secure and retain employment. This program has been discussed by the towns in the region and would be submitted as a consortium application.

Clearly, Hartford would offer that such a program represents an urgent community development need. We have taken the position, and will continue to do so, that the problems of the Greater Hartford region are of an economic nature, not of physical condition. That, as the region has witnessed an outmigration of residents and employers and an inmigration of less able low-income residents, and as the national economy has had and continues to have most serious and deleterious effects on our population, the inability of residents to pay for decent housing and other necessary goods and services stands paramount in the further deterioration of the region, the City, our neighborhoods, and the housing stock.

The three levels of government and the private sector must provide an atmosphere of change, an atmosphere conducive to the improved viability of our neighborhoods and cities. An economic development/community development strategy is the key to this success. And while a regional vocational education program may perhaps represent an imaginative and far-reaching approach for HUD, it is clear that in regions in the Northeast, such as this one, HUD, and the cities must be creative.

The utilization of these turn-back funds for decreasing HUD's indebtedness on outstanding urban renewal loans is a long-term proposition. The positive benefits of this magnitude of CDBG funds in a regional vocational education strategy are certain.

I would appreciate your advising me of the potential for Hartford and the surrounding towns to submit such an application to you for your consideration.

Sincerely,

Richard W. Shettle
Acting City Manager

RWS/rrc

JUN 30 1976

Mr. Richard W. Shettle
Acting City Manager
City of Hartford
550 Main Street
Hartford, Connecticut 06103

DG-1 Hartford FY-2

Dear Mr. Shettle:

Subject: Request for Reallocated Funds.

In your letter of June 3, 1976, you requested information concerning the possibility of applying for the Community Development Block Grant Funds which have been made available as a result of Windsor Locks' decision not to submit a second year application.

According to existing regulations, requests for the use of reallocated funds must comply with the provisions contained in Section 570.409 of the Regulations governing the Community Development Block Grant Program. Those regulations were published in the Federal Register of May 27, 1976.

On the question of the reallocation of funds, Section 570.409(d) states that:

> Entitlement funds available for reallocation will be used primarily to make grants to eligible applicants with urgent needs, including those with entitlements as well as others with special needs arising from urban renewal closeout activities. The term "urgent needs" as used in this section means those urgent needs described in Section 570.401(b).

Under Section 570.401(b), which is the selection criteria for urgent needs applications, the Secretary is authorized to make grants for the purpose of facilitating an orderly transition to the CDBG Program and to provide for urgent community development needs which cannot be met through the allocation provisions of the CDBG Program. Priority

for urgent needs funding is to be given to previously funded urban renewal projects, water and sewer facilities, neighborhood facilities, and open space land projects.

Insofar as the activity proposed by the City does not meet the urgent needs priority criteria outlined above and the number of previously funded programs throughout the State do meet these criteria, we would not advise the submission of an application for urgent needs funds.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Lawrence L. Thompson

Lawrence L. Thompson
Area Director

Reese/tg 6/25/76
cc:
Entitlement
Morgan
Reese
Hutter
RF